

Memorandum

TO: HONORABLE MAYOR, CITY
COUNCIL, AND REDEVELOPMENT
AGENCY BOARD

FROM: Del D. Borgsdorf
Harry S. Mavrogenes

SUBJECT: CDLAC APPLICATION FOR
HOUSING SET-ASIDE TAX
ALLOCATION BONDS

DATE: September 16, 2004

COUNCIL DISTRICT: Citywide

RECOMMENDATION

- (a) Adoption of a resolution by the Redevelopment Agency Board:
- (1) Expressing its intent to issue up to \$125 million in private activity tax-exempt housing set-aside tax allocation bonds to finance loans relating to those projects listed in Exhibit A, attached hereto; and authorizing the Director of Housing to file an application with the California Debt Limit Allocation Committee ("CDLAC") for an allocation of up to \$125 million in private activity bonds; and
 - (2) Delegating to the Director of Finance of the City of San Jose the ability to hold TEFRA hearings relating to the projects listed in Exhibit A and for future issuance of private activity tax-exempt housing set-aside bonds and to the Director of Housing the ability to file future applications to CDLAC for private activity bond allocation.
- (b) Adoption of a resolution of the City Council agreeing to accept the delegation of authority from the Redevelopment Agency to (1) the Director of Finance of the City of San Jose to hold TEFRA hearings relating to the projects listed in Exhibit A and future issuance of tax-exempt private activity housing set-aside bonds and (2) the Director of Housing to file future applications to CDLAC for private activity bond allocation.

BACKGROUND

Since 1993, the Redevelopment Agency of the City of San Jose has issued approximately \$260,000,000 of housing set-aside tax allocation bonds, of which \$48,860,000 was tax-exempt and \$221,390,000 was taxable. These tax allocation bonds are payable from the 20% housing set-aside tax increment revenues and were used to fund grants and subordinate loans to developers of affordable housing projects. Under the Federal tax code, the bonds will usually qualify as tax-exempt if bond proceeds are used to fund grants to developers of multifamily housing projects. The Federal tax code considers such bonds as "for a governmental purpose." However, if bond proceeds are used to fund loans, the bonds will be considered "private activity bonds" under Federal tax code. Private activity bonds will generally be taxable unless the

Redevelopment Agency receives a specific allocation from the State of California of "private activity volume cap." If a bond issuer receives an allocation, then the bonds will qualify for tax-exemption (assuming other requirements of the Federal tax code are met) and the interest rate will be lower than with a taxable transaction.

CDLAC is the State agency that allocates private activity volume cap to bond issuers. Federal tax law sets the aggregate amount it allocates to issuers each year. CDLAC has adopted policies and procedures governing the application by issuers for private activity volume cap. The City applies to CDLAC for each multifamily housing bond it issues on behalf of private developers (profit and non-profit).

History of CDLAC Allocation Process and Procedures

In 1997, the Redevelopment Agency received private activity volume cap of \$17,045,000, which allowed its Housing Set-Aside Tax Allocation Bonds, Series 1997E to be issued on a tax-exempt basis.

In 1998, in response to the surging demand for private activity volume cap, CDLAC revised its policies and procedures and adopted a scoring system that prioritized multifamily housing projects largely on the basis of their proposed public benefits. Those procedures no longer accommodated the award of private activity volume cap for housing set-aside tax increment bonds. Accordingly, since 1998, the Agency has been able to issue taxable housing set-aside bonds where the proceeds are used to fund loans to developers of affordable housing projects.

In January 2004, Housing and Finance Department staff requested and, since then, has worked persistently with CDLAC to modify its policies and procedures to allow for the award of private activity volume cap for housing set-aside tax allocation bonds. Largely as a result of the City's efforts, CDLAC unanimously adopted revised procedures on July 21, 2004. CDLAC now will allow issuers of housing-set aside tax allocation bonds to submit applications for private activity volume cap in the last allocation round of each calendar year. If such volume cap is awarded, the issuing agency will be able to issue its housing set-aside tax allocation bonds at tax-exempt rates rather than higher taxable rates, assuming other federal tax law requirements are met. In so doing, the issuing agency will save considerable interest costs and achieve greater leveraging of its tax increment.

History of the Delegation of Authority

On September 4, 1990, the City Council adopted Ordinance No. 23589, which delegated to the Director of Housing certain specified authorities in the administration of the City's comprehensive affordable housing program (the "Delegation of Authority"). On May 23, 2000, the Delegation of Authority was amended by Ordinance No. 26127 to clarify certain sections and add several other provisions. On June 25, 2002, the Delegation of Authority was further amended by Ordinance No. 26657 to add several provisions delegating additional authority to the Directors of Housing and Finance and to the City Manager. Subsequently, the City Manager delegated to the Director of Housing the Contract Authority granted to the City Manager.

Ordinance No. 26657 authorized the Director of Housing to make adjustments, within defined parameters, to loans and grants previously approved by the City Council; to delegate jointly to the Director of Housing and Director of Finance authority related to the City's issuance of tax-exempt, private-activity bonds to finance the development of affordable housing projects; to delegate to the Director of Finance the authority to hold TEFRA hearings on the City's proposed issuance of tax-exempt bonds to finance affordable housing projects and to the Director of Housing the authority to determine, within defined parameters, various terms and conditions of loans and grants previously approved by the City Council.

ANALYSIS

The requested authorization would allow the City, on behalf of the Redevelopment Agency to file an application with CDLAC by October 1, 2004 for \$125 million of private activity volume cap. This amount covers the loans or loan commitments made with respect to the projects identified in Exhibit A, plus associated costs of issuance and a reserve fund. Housing and Finance Department staff is working with its bond counsel and financial advisor in refining the tax analysis that may reduce the private activity volume cap it will seek in its application to CDLAC and the amount may also be further reduced by the bonding capacity of the 20% tax allocation housing set-aside amounts. All bond documents for any bonds – tax-exempt or taxable – to be issued by the Agency will be brought before the City Council and Agency Board for final approval.

Under the revised procedures, CDLAC, at its final allocation round held each year, may allocate unused private activity volume cap in its rental housing pool to issuers of housing set-aside tax allocation bonds. CDLAC staff currently anticipates that substantial amounts of unused private activity volume cap will become available for this purpose in the current calendar year. If awarded volume cap, the next series of housing set-aside tax allocation bonds, expected in February 2005, can be issued at lower interest rates, allowing the Housing Department to stretch its housing set -aside tax increment further. If private activity volume cap is not awarded, then such housing set-aside tax allocation bonds will be issued on a taxable basis with respect to the projects identified in the CDLAC application.

CDLAC's Housing Set-Aside Program requires issuers to file a formal application that includes, among other information, evidence of appropriate Board action authorizing the Redevelopment Agency to participate in the Program. In addition, Federal Tax Law requires that multifamily housing projects to be financed with the proceeds of tax-exempt bonds be approved at a public hearing (a "TEFRA Hearing").

Multifamily Housing Projects to be Funded

The CDLAC application would cover the City loans made or committed to the multifamily housing projects identified in Exhibit A to this memorandum. Each of these loans or loan commitments has received prior City Council approval. These loans have or will fund a portion of each project's construction and/or land acquisition costs. The remaining project costs have been or will be funded principally with a combination of multifamily housing revenue bonds and tax credit equity. Exhibit A identifies the name of each project, the amount of the City Housing

Department loan and the resolution authorizing it, the City Council resolution authorizing the issuance of multifamily bonds, and, if such bonds are not yet issued, the date that CDLAC allocation was awarded.

The Federal tax analysis relating to the size of a potential tax-exempt bond issue for these projects is on-going. A more refined application amount will be available at the time of the City Council/Agency Board meeting.

Affordability restrictions for a term of 55 years have already been recorded against each project to ensure low and very low-income units. Regulatory Agreements will also be recorded on subject properties and, if they have already been recorded, will be amended to recognize the additional tax-exempt debt.

Delegation of Authority

As discussed above under, "History of the Delegation of Authority," Municipal Code Section 5.06.430 delegates authority to the Director of Finance to conduct TEFRA Hearings for projects to be financed with multifamily housing revenue bonds to be issued by the City and for the Director of Housing to submit applications to CDLAC in connection with such bonds.

Because the Redevelopment Agency is the issuer of housing set-aside tax allocation bonds, that Municipal Code section does not apply, and Agency Board action is required. The Board action will delegate such activities to the Director of Finance and the Director of Housing with respect to the projects listed on Exhibit A and for future tax-exempt housing set-aside tax allocation bonds and the City Council's action will accept this delegation by the Redevelopment Agency. This delegation will streamline the TEFRA process for multifamily housing projects that have multiple sources of funding (i.e. tax-exempt multifamily housing revenue bond proceeds and tax-exempt housing set-aside tax allocation bond proceeds).

PUBLIC OUTREACH

The TEFRA Hearing to be held by the City Finance Director is a method of notifying the community of the Agency's intent to issue tax-exempt private activity bonds for the projects identified in Exhibit A and in connection with future private activity housing set-aside bonds. The public hearing notice will be published by the City Housing Department in the San Jose Post Record, announcing the time and location of the public hearing.

COORDINATION

This action has been coordinated with the Agency's General Counsel and the City Attorney's Office, the Finance and Housing Departments.

COST IMPLICATIONS


No appropriation of funds is required at this time.

HONORABLE MAYOR, CITY COUNCIL, AGENCY
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CEQA

See Exhibit A for the appropriate CEQA references.


DEL D. BORGSDORF
City Manager


HARRY S. MAVROGENES
Interim Executive Director

Attachment

Project Name Borrowing Entity Project Address	CC District	Affordability Mix	Bond Issue Amount	Allocation Date	CC Approval Date	Resolution Number	Bond Issuance Date	City Loan Amount	TEFRA Amount	CC Approval Date	Resolution Number	CEQA
Brooks House (Immanuel Senior) 1710 Moorpark Ave., L.P. Leigh and Richmond Avenues	6	63 @ 30% AMI	\$3,850,000	5/8/01	6/26/01	70508	7/1/01	\$3,325,000	\$3,990,000	2/13/01	70161	Negative Declaration (PDC00-063)
Cinnabar Commons Cinnabar Commons L.P. 891-945 Cinnabar Street	6	194 @ 60% AMI 49 @ 50% AMI 2 Mgr	\$25,900,000	3/26/03	6/24/03	71684	7/1/03	\$6,969,000	\$8,362,800	1/14/03	71385	EIR Resolution No. 71174
Hacienda Villa Creek Hacienda Villa Creek Senior Apartments, L.P. northern terminus of East Court & West Court north of East Julian Street	3	59 @ 50% AMI 20 @ 30% AMI 1 Mgr	\$4,453,000	6/24/02	10/1/02	71229	10/1/02	\$5,363,043	\$6,435,652	4/16/02	70923	Negative Declaration (PDCSH01-10-097)
Oak Tree Village (Branham & Monterey) Branham Lane Apartment Associates, L.P. northeast corner of Branham Lane and Monterey Highway	2	121 @ 60% AMI 53 @ 50% AMI 1 Mgr	\$25,210,000	3/26/03	CalHFA	N/A		\$10,540,000	\$12,648,000	1/14/03	71384	PDC02-033
Fallen Leaves Fallen Leaves Apartment, L.P. 202 Lewis Road	7	111 @ 60% AMI 18 @ 50% AMI 30 @ 30% AMI 1 Mgr	\$18,800,000	9/23/02	12/3/02	71322	12/1/02	\$6,346,148	\$7,615,378	12/3/02	71321	Negative declaration (PDC02-018)
Evans Lane JSM Evans Lane Apartments L.P. 1848 Evans Lane	6	162 @ 60% AMI 39 @ 50% AMI 35 @ 30% AMI 3 Mgr	\$31,000,000	6/24/02	9/24/02	71220	10/1/02	\$15,545,000	\$18,654,000	2/19/02	70838	Negative Declaration (PDCSH-01-10-096)
Summer Crest (Almaden Senior) Almaden Senior Housing Partners, L.P. 1735 Almaden Road	6	52 @ 60% AMI 13 @ 50% AMI 1 Mgr	\$6,050,000	8/22/2001	11/13/01	70709	12/1/2001	\$3,757,000	\$4,508,400	11/13/01	70708	Negative Declaration (PDC00-100)
Turnleaf Fairfield Turnleaf L.P. 3201 Loma Verde Drive	1	16 @ 50% AMI 135 @ 60% AMI 1 Mgr	\$15,290,000	3/26/2003	5/20/03	71559	6/18/2003	\$2,775,000	\$3,330,000	5/20/03	71559	Exempt (PP02-11-331)
Almaden Family Apts Almaden Family Housing Partners, L.P. 1525 - 1541 Almaden Road	7	46 @ 50% AMI 177 @ 60% AMI 2 Mgr	\$31,300,000	7/9/2003	11/4/03	71813	11/7/2003	\$13,775,000	\$16,530,000	4/1/03	71477	Negative Declaration (PDC-SH-98-089)
Delmas Park Delmas Park Associates, L.P. 598 West San Carlos Street	3	26 @ 30% AMI 40 @ 50% AMI 56 @ 60% AMI 1 Mgr	\$13,780,000	9/22/2004	9/28/04	TBD		\$7,206,605	\$8,647,926	6/29/04	72252	PDC03-016
Fairgrounds (HACSC) Land Lease HACSC Fairgrounds Family Associates, L.P. 350 Tully Road	7	76 @ 45% AMI 77 @ 50% AMI 16 @ 60% AMI 1 Mgr	\$17,240,000	9/22/2004	CalHFA	N/A		\$8,378,250	\$10,053,900	4/13/04	72053	PDC02-040
Fairgrounds (Roem) Land Lease Fairgrounds Luxury Apartments, L.P. 350 Tully Road	7	62 @ 45% AMI 55 @ 50% AMI 13 @ 60% AMI	\$23,165,000	9/22/2004	CalHFA	N/A		\$10,856,800	\$13,028,160	4/13/04	72053	PDC02-040
Paseo Senter I Paseo Senter, L.P. 1896 Senter Road	7	12 @ 11% AMI 23 @ 20% AMI 80 @ 50% AMI 2 Mgr	\$7,501,000					\$6,943,800	\$8,332,560	6/29/04	72231	Negative Declaration (PDC03-057)
			\$223,539,000					\$101,780,646	\$122,136,775			